IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6697 of 2001

to

SPECIAL CIVIL APPLICATION No 6716 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUPERINTENDENT ENGINEER

Versus

R CHHANABHAI NATHABHAI

Appearance:

1. Special Civil Application No. 6697 to 6616 of 2001

MR AD OZA G.P. for Petitioner No. 1

MR MH RATHOD & MR MURALI N DEVNANI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 24/08/2004

ORAL COMMON JUDGEMENT

1.0. Though the matter was fully heard on 13th August, 2004, the same was adjourned from time to time for production of additional evidence. Today, such additional evidence was produced on record by the State Government.

1.1. In this group of petitions, the State of Gujarat has challenged the judgment and award dated 28th February, 2000 passed by the Labour Court, Jamnagar, in Reference [L.C.J.] No. 169 to 188 of 1998, whereby the Labour Court has directed the State Government to reinstate the respondent-workmen on his original post with continuity of service without backwages.

2.0. The short facts of the case as they emerge from the record are that the respondent-workmen were employed as daily wage employees in the Irrigation Department. It is the say of the petitioner State that the services of the respondent-workmen were taken as per the requirement. It is also the say of the petitioner State that the respondent-workmen have not completed 240 days of service in a year. It is further the say of the petitioner that since the petitioner was engaged in the nature of project work, on completion of the project, the services of the respondent-workmen came to be terminated.

2.1. In view of the termination, the respondent-workmen filed complaint before the Assistant Labour Commissioner, alleging that their services were illegally terminated. However, on failure of the proceedings before the Assistant Labour Commissioner, it culminated into Reference being Reference [L.C.J.] No. 169 to 188 of 1998, wherein, the Labour Court has allowed the References with the aforesaid directions. Hence, this petition.

3.0. Mr. A.D. Oza learned Government Pleader appearing for the petitioner State has raised contentions that the Irrigation Department is not an "Industry" and that the respondent-workmen were employed for doing purely temporary work and their engagement was purely on ad hoc basis.

3.1. In the context of the aforesaid contention Mr. Rathod learned advocate appearing for the respondent-workmen has relied upon the decision of the Full Bench of this Court in the case of Gujarat Forest Producers, Gatherers & Forest Workers Union v. State of Gujarat reported in 2004 (2) G.L.H. 302, wherein, this Court has held as under :-

"28.6. We, therefore, answer the part of question no. 1 relating to the Irrigation Department of the questions referred in Special Civil Application No. 4715 of 2003 and 4435 of 2001, by holding that the activity of irrigation and canal works undertaken by the Narmada Water Resources and Water Supply Department is an "industry" . As regards the questions nos. 2 and 6 referred in the said matter, we hold that the decision of the Division Bench in P.W.D. Employees Union v. State of Gujarat reported in 28 (2) G.L.R. 1970, which is confirmed by the Supreme Court by a three Judge Bench Judgement in the decision in State of Gujarat v. P.W.D. Employees Union, reported in (2002) 10 S.C.C. 147, holding that the Irrigation Department of the P.W.D. is an "industry" under Section 2 (j) of the Industrial Disputes Act, 1947, lays down the correct law and the decision in S.C. Thakor v. State of Gujarat reported in (2000) 1 G.L.H. 482 and State of Gujarat v. D.B. Thakor, reported in (2003) 2 G.L.H. 40, to the extent they hold to the contrary, do not lay down correct law and are, therefore, overruled. In view of the above discussion, the decision of the learned Single Judge in State of Gujarat v. Maniben reported in (2003) 2 G.L.H. 368 has correctly followed the decision of the Division Bench of this Court in P.W.D. Employees Union v. State of Gujarat, reported in 28 (2) G.L.R. 1070 and in the decision of the Supreme Court in Des Raj (supra) reported in A.I.R. 1988 S.C. 1182, for holding in paragraph 44 of the judgement that the Irrigation Department of the State is an "Industry". The question No. 4 is answered accordingly. "

3.2. Therefore, as referred hereinabove, the main contention of the State Government, with regard to "Irrigation Department" is not an "Industry" no longer exists, even on merits.

3.3. Mr. Rathod has further submitted that before the Labour Court it was established that the respondent-workmen were working for more than seven years, but record of only five years was produced. Mr. Rathod further contented that the petitioner State has not followed the provisions of Section 25-G & Section 25-H of the Industrial Disputes Act.

3.4. Mr. Rathod has further placed reliance on the decision of this Court delivered in Special Civil Application No. 4657 of 2001 wherein, the learned Single Judge has directed to follow the provisions of Section 25-H of the Industrial Disputes Act and further directed the State Government to comply with the award within six weeks. Against the said decision the State preferred an Appeal and ultimately, the Division Bench vide order date 24th November, 2003 dismissed the appeal. The appellate order was carried before the Apex Court, which also came to be dismissed.

3.5 In this connection it is pertinent to note a decision of the Supreme Court in the case of Central Bank of India Vs. S. Satyam, reported in AIR 1996(5) SCC 419 (=1996 AIR (SC) 2526, JT 1996(7) SC 181: 1995(5) SCALE 567: 1996(6) Supreme 61: 1996(2) LLJ 820: 1996 LIC 2248: 1996(74) FLR 2063: 1997(90) FJR 106: 1997(2) LLN 31: 1996(4) SLR 695: 1996(3) SLJ 1: 1996 SCC (L&S) 1273). In the said decision the Supreme Court held that Section 25-H of the Act is applicable to all retrenched workmen and not only to those covered by section 25-F read with section 25-B of the Industrial Disputes Act. In that view of the matter the case of the respondent workman is required to be considered under section 25-H of the Act and the Labour Court is justified in doing so.

4.0. Having heard the learned advocate for the respective parties, it clearly appears that though the petitioner State was having record with regard to employing some other workmen in place of the respondent-workmen, the same was not produced before the Labour Court and, therefore, the Labour Court has drawn conclusion against the petitioner State. It further appears that while dealing with the contention with regard to completion of service of 240 days in a year, the Labour Court was conscious about the termination, but in view of the provisions of Section 25-F of the Industrial Disputes Act, and also in view of the provisions of Section 25-H of the Industrial Disputes Act, where requirement of 240 days is not there, the Labour Court has granted reinstatement. Thus, the view taken by the Labour Court is just and proper and no interference is called for.

4.1. From the record it appears that at Exh.63. the representative of the Executive Engineer has clearly stated that they were not required to maintain the seniority list and the question of reemployment is not there.

4.2. Mr. Oza has raised contention that some of the important documents were not considered by the Labour Court. In view of that, a suggestion was put to the State Government that in order to see that all documents are considered in their true spirit, the matters shall be remanded to the Labour Court, on condition that the petitioner State shall pay salary at the rate of Rs.20/per day from the date of the order of Labour Court till the matter is heard by the Labour Court. But the same was not accepted by the petitioner State. Though this Court in Special Civil Application and even in contempt proceedings had directed to comply with the provisions of Section 17-B of the Industrial Disputes Act, they have not followed the same.

4.3. My attention was invited to the fact that though this Court [Coram : Kshitij R. Vyas & Akshay H. Mehta, JJ.] vide order dated 9th May, 2003 had passed the order vacating the interim relief passed in favour of the petitioner State, the Officer of the State Government had not complied with the direction of this Court. The said order reads as under :-

> In view of the fact that no reply is filed to this application, we grant this application and vacate the interim relief granted by this Court on 17.8.2001 in the main petition. This application stands disposed of. The respondent is directed to comply with the order passed by the Labour Court. Main petition to be listed for hearing on 24th June, 2003.

5.0. Under the circumstances, in my view, inspite of the order of this Court, if the Officer of the State Government had not obeyed the order of this Court, this petition ought to be dismissed only on the sole ground that they have not complied with the Court's order. Even otherwise, from the record, it appears that the Labour Court has directed them to follow the provisions of Section 25-H of the Industrial Disputes Act in order to maintain seniority and restore them on their original post or on the post which they were holding before retrenchment.

5.1. Mr. Oza has placed reliance on the decision of this Court in the case of State of Gujarat v. Ramesh Mopabhai Rathod reported in 2003 (3) G.L.R. p.2590, wherein it has been held that the finding with regard to applicability of Section 25-G as well as Section 25-H in the award cannot be upheld as that finding is not justified. The same will not apply in the present case

inasmuch as the Labour Court has given its finding which cannot be disturbed.

5.2. In my view, in the aforesaid decision, this Court has found that the Labour Court has not recorded any finding regarding breach of Section 25-G and Section 25-H of the Industrial Disputes Act. In the present case, inspite of the opportunity so given to the concerned Executive Engineer, he has not produced the relevant record to establish that no other persons were employed. In my view the finding of the Labour Court regarding breach of Section 25-G and Section 25-H is just and proper and by passing such award the Labour Court has only restored them on their original post which even otherwise they were entitled as per the provisions of Section 25-H.

5.3. Lastly, Mr. Oza has submitted that the project is over and the Officer who deposed before the Labour Court had made statement in respect of other Divisions and that the Labour Court has committed an error in finding that the work is available. However, under Article 227 of the Constitution of India, this Court will not appreciate the evidence on record to come to a different finding and this Court cannot disturb the finding of the Labour Court.

6.0. In the result, the petitions are rejected. Rule is discharged with no order as to costs. However, it is clarified that since the services of the respondent-workmen were dismissed, they will be entitled for the benefits from the date of publication of the award of the Labour Court.

[K.S. JHAVERI, J.]

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